COURT NO. 2

THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Appeal from Order No. 346 of 2002

The New India Assurrance Co. Ltd. … **Appellant.**

Versus

Smt. Chaki Devi
and others. … **Respondents.**

Coram : Hon'ble P.C. Verma, J.
Hon'ble B.S. Verma, J.

This appeal has been preferred under Section 173 of the Motor Vehicles Act, 1988 ***(in short the Act)*** against the judgment and Award, dated 4-9-2002, passed in M.A.C.T. Petition No. 84 of 1999, Smt. Chaki Devi and others Vs. Bishan Singh and others, by the Motor Accident Claims Tribunal, Uttarkashi ***(hereinafter referred to as the Tribunal***), whereby the learned Tribunal has awarded a sum of Rs. 3,91,000/- along with simple interest @ 9% per annum in favour of the claimants as against O.P. No.3-appellant. Aggrieved, the Insurance Company-O.P.No.3 has come up in appeal with a prayed to set aside the impugned judgment and award mainly on the ground that the vehicle in question was a goods carrier and not for carrying passengers, the deceased was a gratuitous passenger and vehicle was being plied in breach of policy condition and quantum of compensation and it has been contended the findings of the learned Tribunal are not based on evidence on record.

We have heard learned counsel for the appellant, Mr. T.A.Khan as well as learned counsel for the claimant-respondent no. 1 to 5, Mr. B.S.Negi, and have

carefully gone through the entire material on record including the impugned judgment and award.

Brief facts are that Jaipal Singh (the deceased) sustained grievous injuries and died as a result of motor accident on 29.5.1999 involving Truck No. U.G.Y.-8577, driven rashly and negligently by its driver. In the claim petition, it is alleged that at 11.00 a.m. on the fateful day, the deceased was traveling by the said truck for Motor-Sankari to Jakhol for unloading the food grains. When the truck reach below Sankari Gaon, due to rash and negligent driving of the driver, it went off the road and rolled down into the river, with the result the deceased sustained grievous injuries and subsequently, his dead body was recovered. The deceased was earning Rs. 10,000/- per month and was engaged in the work of guide, trekking coolie, **Palledari**, agriculture and animal husbandary. The O.P. No.2, owner of the truck, contested the claim petition and filed his written statement. Accident has been admitted, but it has been asserted that the accident was not the result of rashness and negligence on the part of the driver, but it was due to steering failure of the vehicle. The deceased was not an authorized passenger. O.P. No. 3, Insurance Company, filed its written statement and contended that there was no negligence on the part of the driver, but the driver was not holding a valid driving licence, nor the insured possessed necessary documents of registration certificate, etc. in respect of the vehicle in question. The O.P.No.1, driver of the vehicle, has not contest the claim petition, which proceeded ex-parte against him.

The learned Tribunal framed as many as six Issues in the case. **Issue No. 1** related to rash and negligent driving by the driver of the offending vehicle resulting into

injuries and consequent death of the deceased. **Issue No. 2** related to the deceased being valid passenger on the truck. **Issue No. 3** related to compensation and relief. **Issue No.4** related to authorization of the vehicle to carry passengers. **Issue No. 5** related to holding to valid driving licence by the driver of the Truck in question. **Issue No. 6** related to breach of policy conditions. After considering the evidence on record, the Tribunal has held on Issue No. 1 that the accident in question, resulting into injuries and consequent death had occurred due to rash and negligent driving by the driver of the Truck involved in the accident. The Tribunal took Issue Nos. 2 and 4 together for decision. It has been held that the Insurance Company has failed to substantiate its contention on these issues, therefore, both the Issues have been decided against the Insurance Company. On Issue No.5, the Tribunal has observed that paper no. 55-C is the copy of driving licence of driver Bishan Singh. This issues has also been decided against the appellant. On Issue No. 6, the Tribunal has held that the deceased was travelling by the truck in question as per conditions of the policy as labour and has decided the Issue against the appellant. On Issue No.3, the Tribunal found that deceased was aged 40 years, as disclosed from the Post Mortem Report. It has also been held that the income of the deceased can be determined at Rs. 3,000/- per month as labour thereby loss of monthly dependency has been worked out after deducting 1/3rd from the said amount, i.e. Rs. 2,000/-. Thus, annual loss came to Rs. 24,000/-. To determine the just amount of compensation, multiplier of ***16*** has been applied and loss of dependency has been calculated 16 x 24,000 = 3,84,000/-. The Tribunal has further awarded sum of Rs. 5,000/- towards fureral expenses, Rs. 2,000/- towards loss of consortium and love and affection, thereby total compensation of Rs. 3,91,000/- along with interest @ 9% per annum, as mentioned earlier.

So far as the contention of the learned counsel for appellant that the deceased was not a valid passenger in the truck and the vehicle was not meant for carrying passengers is concerned, we find that all these aspects have been closely considered by the Tribunal in the impugned judgment and award by framing separate issues on these counts. Nothing has been pointed out to us to indicate that the findings of the Tribunal are erroneous. It is the positive case of the claimant-respondents that the deceased was doing the work of **Palledari** in the trade of food-grains and he was traveling the truck in the capacity of a labour. Insurance paper of the vehicle also supports this fact that as per cover note of insurance (paper no. 8-C) the truck was authorized to carry four labourers. No evidence to the contrary has been led by the Insurance Company before the Tribunal to substantiate its contentions. The argument of the learned counsel on this point has no force.

The learned counsel for the appellant has drawn our attention to paper no. 37-D, which is application under Section 170 of the Act moved before the Tribunal and has submitted that the appellant has right to contest the case on all the defences available to the insured/owner also as there has been collusion between the claimants and O.P.Nos. 1 and 2. This contention is totally baseless and misconceived. The learned counsel could not show the permission granted by the Tribunal to take all defences. It is now well settled law that the insurer cannot contest the claim petition on all other grounds except as enumerated in Section 149(2) of the Act, unless permission is granted to Insurance Company by the tribunal. Mere moving an application cannot take the seat of permission under Section 170 of the Act, therefore, it is not open to the appellant to challenge the quantum of award. We

are supported in our view by the verdict of the Hon'ble Apex Court in the case of ***"United India Insurance Co. Ltd. Vs. Jyotsnaben Sudhirbhai Patel and others" [(2003) 7 Supereme Court Cases, 212]*** and ***"National Insurance Company Ltd. Chandigarh Vs. Nicolletta Rohtagi and others" [(2002) 7, Supereme Court Cases, 456]***. Nothing has been shown to us so as to warrant any interference with the findings of the learned Tribunal.

No other point was urged or argued before us in this appeal.

Ultimately, we are of the view that the present appeal is devoid of merit and must fail.

The appeal is dismissed. The impugned judgment and award is upheld. No order as to costs.

The amount in deposit with this Court be remitted to the Motor Accident Claims Tribunal concerned.

26-08-2004 **(B.S. Verma, J.)** **(P.C. Verma, J.)**
RCP